IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 541 of 2003
with
CRIMINAL MISC. APPLICATION NO. 8987 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NAGJIBHAI DAHYABHAI DESAI

Versus

STATE OF GUJARAT

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Appearance:
1. Criminal Revision Application No. 541 of 2003
MR MC BAROT for Petitioner No. 1-4
MS NANDINI JOSHI, APP for Respondent No. 1
MR RJ GOSWAMI for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 26/02/2004

CAV JUDGEMENT

Rule. Ms. Nandini Joshi waives formal service of notice of rule on behal of the respondent State.

2. Petitioners are Original accused in Criminal Case No. 3805 of 2003 and they have challenged the legality and propriety of the order dated 20.10.2003 passed by

learned Judicial Magistrate First Class, Deesa whereby he has taken cognizance of the offences punishable under Section 302, 34 and 112 of IPC.

2. According to the petitioners one FIR was lodged on 10.8.2003 in Deesa Rural Police Station by one Chamar Babubhai Cheharbhai and the said complaint was registered as CR No. I-179/2003 under Section 279, 304A of IPC and Section 174, 184 and 134 of the Motor Vehicles Act (hereinafter referred as MV Act). In the said complaint, petitioner No. 1 Nagjibhai Dahyabhai Desai was shown as accused. The said FIR is produced as Annexure-B and it is the case in the said FIR that the complainant's brother, the deceased had gone to grace his cattle at the outskirts of his village and the complainant had gone to give water to his brother. At the time when he was about to reach his brother, he saw that the petitioner No. 1 Nagjibhai Dahyabhai Desai had run down his brother with his tractor and trolly. Trolly was loaded with earth and because of the hit given by the vehicle and other injuries, his brother died on the spot. It is also alleged that after the incident, accused Nagjibhai Dahyabhai Desai ran away. Thereafter, complainant went to his home and ultimately, by taking his relatives with him he approached the police station and lodged the complaint. According to the complainant, the incident has occurred on 10.8.2003 at about 13:00 hours. According to the petitioners, the complainant filed another complaint before the District Superintendent of Police, Banaskantha on 11.8.2003 naming the petitioner No.2 and 3 and two other unknown persons in the offence and it is alleged in the second complaint that at the time when the complainant had gone to give water to his brother, accused were giving blows and inflicting injuries to his brother and his brother died because of the injuries caused by the accused persons. The allegation in the second complaint is that police was informed about the incident initially by the accused and, before the complainant could go to the police station and file his complaint, the police had arrived at the place of the offence and thereafter police had forcibly taken a wrong complaint and the FIR registered with Deesa Rural Police Station does not contain the true facts of the incident. On 1.9.2003, complainant made one another complaint to Dy.S.P. Banaskantha stating that Police is wrongfully acting under the influence of the sitting MLA of Deesa and Police is converting the case of murder into a case of accident. Serious complaints were made against the investigating Police Inspector. On 7.9.2003 the complainant sent one more application in the form of a

complaint/grievance addressing to the Chief Minister with a copy to Dy. S.P. Banaskantha making further allegations against the panel of Doctors who performed the postmortem. It is the say of the petitioner that pursuant to the complaint made to the D.S.P. on 11.8.2003 the D.S.P. transferred the investigation of the incident from Police Inspector to Dy. S.P. The Dy. S.P. has verified the statement of witnesses and other persons recorded by Police Inspector and he further recorded the statements of witnesses. As the Dy. S.P. was satisfied that the incident was an accident and not offence of murder, he prepared the report accordingly and it was found during the investigation by Dy. S.P. Mr. Munia that at the relevant time, petitioner No.1 Nagjibhai Dahyabhai Desai was not driving the said tractor with a loaded trolly but the accident is caused because of the rash and negligent driving of petitioner No.4 Jakshi Raghunathbhai Harijan. Petitioner No.4, therefore, was arrested in pursuant to such finding and was subsequently released on bail by the police because, all offences being bailable offences. Dy. S.P. entrusted with the investigation by Dy. S.P. Banaskantha submitted his final report in the form of charge sheet to the Chief Judicial Magistrate, Deesa under Section 173(2) of Cr.P.C. for the offences punishable under Section 279, 304A of IPC and 117, 184 and 134 of Motor Vehicles Act against petitioner No.4 Jakshi Raghunathbhai Harijan. On the strength of this charge sheet submitted, learned Chief Judicial Magistrate took cognizance of the offences as mentioned in the charge sheet and issued summons to petitioner No.4 on 9.10.2003. Copy of the papers of investigation supplied to the accused along with the charge sheet are also available on record. A Criminal Case No. 3805 of 2003 has been registered on the day on which Court issued process on 9.10.2003. The said criminal case was transferred to learned JMFC Deesa and the petitioner No.4 then was directed to surrender himself to the police custody and applied for bail before the learned JMFC. The complainant filed detailed objections to the bail application and resisted against the report submitted by the police under Section 173(2) of Cr.P.C. and after hearing, the learned JMFC rejected the bail application preferred by petitioner No.4 Jakshi holding that looking to the police papers and the statements of witnesses recorded by investigating officer, judgement produced along with the charge sheet, the offence of 302 IPC appears to have been committed. Copy of the bail application and order rejecting it are on record vide Annexure-G. It is contended that accused No.4 feeling aggrieved by the decision rejecting the bail plea by the

learned JMFC preferred bail application in the Court of Additional Sessions Judge, Banaskantha at Deesa. But, after considering the affidavit and other details brought before the learned Additional Sessions Judge, learned Additional Sessions Judge rejected the bail application preferred by petitioner No.4 Jakshi. According to the petitioners, on 21.10.2003 the complainant filed a written application in the Court of learned JMFC requesting him to take appropriate steps against the petitioners being accused persons in the crime. On 22.10.2003 the learned JMFC passed a detailed order that the complainant has filed a written application before him, it is not in the nature of complaint under Section 21(d) of Cr.P.C. and hence he is not considering the same as complaint. But, it is further held that he is proceeding on the police report submitted to him under Section 173(2) of Cr.P.C. and after referring certain judgements, cited before him, the learned JMFC passed an order not accepting the police report, as it is held that, from record it appears that prima facie an offence punishable under Section 302 IPC seems to have been committed and therefore, he is taking cognizance on the basis of Section 190 (1)(b) of Cr.P.C. of the offences punishable under Section 302, 34 and 114 of IPC and impleaded petitioner No.1, 2 & 3 as accused. The learned JMFC, after taking cognizance issued non-bailable warrant against the petitioner Nos. 1, 2 & 3. In the present revision application, the petitioners have challenged the order dated 22.10.2003 taking cognizance under Section 190(1)(b) for the offences punishable under Section 302, 34 and 114 of IPC on various ground mentioned in para 13 to 23 in the memo of revision application.

3. This revision application was listed for admission hearing on 3.11.2003 and while issuing notice, the petitioner Nos. 1, 2 & 3 have been granted interim protection and the execution of implementation of the order of trial Court issuing non-bailable warrant against the applicants has been placed under ad interim suspension. This petition was listed for admission hearing on 20.1.2004 and the papers of inquiry were called on that day. On 30.1.2004 when this revision application was listed for hearing, the Court, after some deliberations, was of the view that Dy.S.P.Shri Munia who has investigated the crime and charge sheeted the accused for negligent driving is required to be called with all papers of investigation related to very offence including application made before the Dy. S.P. on 11.8.2003 with other relevant papers.

4. On 7.2.2004 in compliance of the order passed by

the Court, Mr. Munia, Dy. S.P. remained present with all papers of investigation and has replied certain queries put to him.

5. I have considered the papers of investigation submitted by Dy.S.P.Shri Munia while chargesheeting the accused Jakshi for the offence punishable under Section 304A, 279 of IPC and other offences punishable under Motor Vehicles Act. But, I am surprised that certain statements either recorded or verified by Dy. S.P. Mr.Munia are not forming part of the charge sheet submitted. More than one witnesses have said to the investigating officer that the deceased was assaulted, motive is specifically pleaded. The number of injuries found on the body of the person deceased is prima facie found relevant to the narration of the incident given by certain witnesses including the complainant. The statement recorded on 3.10.2003 of Rambhaben W/o Kesaji Ravaji, resident of village Ranpur and Panabhai Mavabhai, resident of village Ranpur, produced on behalf of original complainant, are found relevant. It seems, learned Magistrate, while passing the order under challenge has considered various aspects including the photographs of the dead body on the spot of the incident shown by the complainant side. The death certificate given by the Doctor and the number of injuries mentioned in column No.17 of the Postmortem note of the body of the deceased has been given some weightage. During the course of hearing, Dy. S.P. Mr. Munia has fairly accepted that, after taking over investigation, he has not recorded statements of Doctors who have performed autopsy. Photographs also could have been shown but, Doctor, in absence of will mark or crush injury on the body of the person deceased could have been pointed out to these Doctors in light of the nature of allegation made by the complainant in the application filed in couple of hours before Dy.S.P. The contents of the application submitted before Dy. S.P. are sensitive and serious. It is averred in the application that unless the honest investigation starts, complainant and the relatives of the deceased shall not lift the dead body lying in the Hospital. So, the subsequent applications made in the month of September and October, if, could have been ignored by the investigating officer, then also there was ample scope to investigate the crime in the direction suggested by the complainant. No pointed question was asked to the Doctor as to whether the injury found on the body of the person deceased, could be infected by hard and blunt substance like Lathi or blunt portion of agricultural equipments. I have seen the points of query raised to the Doctor. It is in the form

of a letter but, no question has been put to the Doctor by the investigating officer to the effect that, in a single event, where a tractor has given a hit to a pedestrian and allegedly have been run over either by tractor or by trolly could sustain injuries found on the body of the person deceased or any other injury like will mark also could have been seen at the time of postmortem note. Without entering into merits, or commenting on the matter and trustworthiness of the complainant or, meticulousness required to be shown in such cases by investigating officer, that too of the rank of Dy.S.P., appropriate orders, in the larger interest of justice, is required to be passed.

6. The legal hurdle shown by Mr. Barot during the course of oral submission is that; after registration of the offence being CR No. I-179/2003 on 10.8.2003, a report under Section 173(2) of Cr.P.C., and by accepting the report, the learned Judicial Magistrate First Class Deesa, had taken cognizance by juridical order of taking cognizance of the offence punishable under Sections 279, 304A IPC and Section 177, 184 and 134 of Motor Vehicles Act and had ordered issuance of process. So, a criminal case punishable for above said offences was instituted in the Court of learned JMFC Deesa on that day. Unless, this order is rejected, or otherwise altered or revised under due process of law, cannot be treated as either revoked or cancelled. No second order, directly or indirectly, ignoring the earlier order, could have been passed by the learned JMFC even after hearing the parties. Sub sec.(5) read with sec. 8 of sec. 173 Cr.PC provides clear embargo. In the present case, there was no further investigation in respect of the offences registered and investigated by police and, after the report under sub-Section 2 of sec. 173 Cr.PC. It is not the case where the learned Judicial Magistrate, to whom the report under sub sec. (2) submitted has refused to accept the report and has decided to take cognizance of any offence other or different, mentioned in the report. So, the act of issuing process for the punishment under sec. 302 original complainant was by inquiry by calling original complainant, was, by calling opinion of Doctor who had performed autopsy of the dead body of the person deceased, could have ignored the registration of the offence on earlier occasion. The error committed by the learned Magistrate by issuing process of other offence, on the strength of very report filed by the police under sub-Section 2 of Section 173 CR.PC, has created a situation whereby, it can be said that the same Court has taken cognizance of two different offences on one and same police report submitted on completion of

investigation. so, the second order issuing process under Section 302 etc IPC is not at all sustainable. Petitioner Jakshi, according to Mr. Barot, is dragged to a precarious position for the offences punishable under Section 304A Cr.PC. He was enjoying bail and, without cancelling the bail, granted by the police, he has been taken into police custody and he has been asked to face the trial under offence punishable under Section 302 IPC with other three offenders who, according to the impugned finding recorded by the learned JMFC, allegedly has committed offence of murder of deceased Musrubhai Cherabhai. It is submitted by Mr. Barot that there was no scope of taking direct cognizance under Section 190(1)(b) of Cr.PC. In support of this argument Mr. Barod has placed reliance on the decision of Bombay High Court in the case of M/s Mediscarach Laboratories & Ors. v. State of Goa, 1997 Cr.LJ 1269. Three persons other than the accused Jakshi who are not even named in the charge sheet could not have been dragged into a criminal proceeding in light of the ratio of the decision reported in the case of Kishori Singh & Others v. State of Bihar & Another, 2000 (4) Crimes 158 (SC); wherein, Supreme Court has held that a cognizance of offence against the accused persons not named in the charge sheet even though named in the FIR, the learned Magistrate taking cognizance of the offence, could not have issued process against such persons. Such an order is not justified. The learned Magistrate could not have issued process against those persons not chargesheeted. So, the persons other than named in the charge sheet can be arrayed as accused persons in exercise of powers under Section 319 of Cr.PC. When some evidence or material is brought on record in course of trial or that could also be arrayed as accused persons only when a reference is made either by learned Magistrate while passing an order of commitment or by learned Sessions Judge to the High Court and the High Court, on examining the material, comes to the conclusion that sufficient materials exists against them even though police might not have filed charge sheet. So, the revisioners, other than accused Jakshi are also not asked to face the trial in exercise of powers vested under Section 319. As per decision of the Bombay High Court reported in the case of Baba Abdul Khan and others v. Smt. A.D.Sawant, JMFC Nagpur and others, 1994 CRI.L.J. 2836, the Judicial Magistrate First Class is not empowered to review or set aside its own order. So, the order of issuing process on the same report were there was no fresh material legitimately brought on record is bad because learned Magistrate cannot review its own order directly or indirectly. Mr. Barod has also pointed put one decision reported in the case of

Ramesh Chandra Biswas v. The State and Another, 1994 CRI.L.J. 1134 wherein, Calcutta High Court has held that the Magistrate cannot review its own order in this cited decision. The investigating agency had filed charge sheet against some accused persons. This allegation of above charges was rejected by the Magistrate but subsequently the same prayer was granted. The Court held that this amounts to review of a decision, which is not permissible and it was incompetent to allow the very prayer. Section 362 Cr.PC. does not empower the Magistrate to revise or review his own order. In case of Hemant P Vissanji & Others v. Mulshankar Shivam Rawal and Another, reported in 1991 CRI.L.J.3144, the Bombay High Court has held that Section 319 Cr.PC. shows that the policy of the Court is that offence can be taken cognizance of once only and not repeatedly upon discovery of further particulars if it was permissible to take cognizance of the same offence repeatedly then it was unnecessary for the legislation to have put Section 319 Cr.PC on the statute book. For short, according to Mr. Barot, the revision should be allowed and the order of issuing of process of the offence punishable under Section 302, 34 and 114 IPC and order of non-bailable warrant should be quashed. It is submitted that this Court should observe that petitioner Jakshi should be prosecuted for the offence punishable under Section 304 A etc for which the cognizance was already taken by the learned JMFC on the strength of the police report submitted on completion of investigation.

7. I have carefully considered the papers of investigation and, as observed earlier, there is enough strength in the grievance expressed by the original complainant and the facts pointed out by Mr. Goswami. In response to the query raised by the Court, learned counsel appearing for the original complainant Mr. Goswami and learned APP have fairly submitted that this Court, if, is inclined to quash the process taken up by the learned Magistrate on the strength of police report and directs the responsible authority to investigate the crime in light of the query raised by this Court and, certain facts, which are already there in the papers of investigation, then the appropriate orders can be passed. Mr. Barot, learned counsel appearing for the accused revisioners has made twofold submissions after the query raised by the Court that, the order taking cognizance and issuance of non-bailable warrant should be quashed and the learned Magistrate should be directed to proceed with the trial against accused Jakshi against offence punishable under Section 304 A etc. as per the cognizance already taken earlier day on which he was

charge sheeted and, if the learned Magistrate conducting trial, if, is satisfied to the effect that this is a case wherein further investigation is required or some other persons are required to be joined as accused persons, then, at appropriate stage, on the available evidence or material on record, the learned Magistrate may pass necessary orders. In the alternative, he has argued that the investigation, by quashing both the orders issuing process on the police report can be quashed and, further investigation can be ordered. But, simultaneously, all the revisioners should be protected from formal arrest and should be treated as accused persons on bail pending investigation.

8. The Court is aware about scope of jurisdiction of this Court exercising revisional jurisdiction under Section 397 read with Section 401 Cr.PC. But when this Court has offered an opportunity to place their say before the Court. The order of quashing process, initially issued by learned Magistrate, on the strength of the police report, submitted vide order dated 9.10.2003 and, the second order under challenge dated 22.10.2003, both can be quashed and the Court is of the view that such an order shall not prejudice the either side because, on examination of record brought before this Court, it is apparent that, any of these two orders issuing process of different offences on the police report submitted under sub-Section 2 of Section 173 Cr.PC sustains, then, there is scope of miscarriage of justice. It is likely to lead to some kind of frustration when some important statements are not the part of the charge sheet. Statement recorded under Section 161 Cr.PC recorded by the Investigating Officer at different stage are not made part of charge sheet and other cirumstantial evidence which were available with the police, were also not placed with the report. Statement of Doctors, as observed earlier have not been recorded after showing the photograph of the deceased taken on the spot and, with or without showing those photographs, this is a case, wherein, some further detailed investigation is required and, all papers are required to be placed before the Court.

9. The ratio of the decision in the case of State of M.P. v. Bhooraji & Another, (2001) 7 SCC 679, positively assist this Court in passing appropriate orders to avoid failure of justice. The other decision which helps the aggrieved complainant reported in case of Pandit Amulakhchand Bansidhar Bhargav v. Ranchhodbhai Manibhai Patel & Others, 1983 (1) GLR page 752. I would like to quote the relevant part of the decision, wherein

this Court has observed as under:

"If the Legislature desired to provide for an altogether different situation unconnected with sub-sec.(1), then it would have, in all probability, enacted it as a separate section and not as a part of sec. 210. The way this section is worded also indicates that sub-secs. (2) and (3) are not unconnected with sub-sec. (1). Sub-secs. (2) and (3) open with the words "If a report is made by the investigating police officer under sec. 173" and "If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report". That would mean that what is provided therein is in relation to what is provided in sub-sec. (1). Sub-sec.(1) contemplates calling for a report from the police officer conducting investigation in respect of the matter which is under enquiry before the Magistrate. If sub-secs. (2) and (3) are to be regarded as totally inconnected with sub-sec. (1), then what the learned Magistrate is supposed to do with that report will remain unexplained and not provided for. Again the words "against any person who is an accused in the complainant case" occurring in sub-sec.(2) clearly imply existence of a complaint case prior to the making of the police report. It is further provided in sub-sec. (2) that the Magistrate should "inquire into or try together the complaint case and the case arising out of the police report". That would mean that there should first be a complaint case followed by a case instituted upon a police report. it is, therefore, not possible to take the view that sub-sec. (2) is independent of and unconnected with sub-sec. (1). Section 210 really deals with one type of situation arising as a result of a complaint case being filed before a Magistrate and when investigation by the police is in progress in relation to the offence which is the subject matter of the enquiry or trial; and it provides for the procedure to be followed by the Magistrate when he finds that two parallel cases for the same offence are pending before him. If sec. 210 is construed in this manner, then the first condition which should be satisfied before the said section can apply is that there should be a case instituted otherwise than on a police report pending an inquiry or trial. If

cognizance is already taken on the basis of a police report and then a complaint is filed before the Magistrate this Section will have no application. It is not intended to meet with such a situation or to deal with consequences arising therefrom.

The next question to be considered is whether independently of sec. 210 it was permissible for the learned Magistrate to amalgamate the two cases. It was urged that in absence of any specific provision in the Code enabling the Court of the Magistrate to amalgamate two independent cases, the learned Magistrate could not have amalgamated the case filed by the complainant and the case which was instituted on a police report. Dealing with such a situation, the Orissa High Court in Sudhakar Das v. Dayanidi Mohanty, AIR 1965 Orissa 114, observed as under:

"It is primarily the right of the person either to make his complaint before the Magistrate or lodge an information before the Police and thus to choose an appropriate forum for initiation of the criminal proceedings. Under sec. 154 and 156, it is the statutory right of the Police to investigate without requiring any authority from a Magistrate and, in fact, may proceed to investigate a case on their own information and without formal information by any party. If a case is initiated on a police report, the accused also gets the advantage of the previous statements recorded by the investigating officer so as to confront the witnesses with the same at the trial. Therefore, it is reasonable to say that in a case of competition between the two parallel proceedings, one based upon a private complaint and other on a police report, the former should lose its identity and merge in the latter."

Though the question before that Court had arisen in the context of right to file an appeal under sec. 473, the observations made by the Court are of general importance. What is observed by the Orissa High Court is really the basic principle of criminal jurisprudence in this country. No doubt, it is true that there is no specific provision in the Code enabling the Magistrate to amalgamate two cases pending before him, but if such a course is adopted in the interest of justice, it cannot be said to be illegal. Such

power can also be spelt out from the provisions of secs. 190, 219, 223 and 216 of the Code. What the learned Magistrate did in this case was that he took cognizance against some of the accused on the basis of the charge-sheet filed in his Court. He thereafter took cognizance against other accused and also of other offences on the basis of the complaint filed before him. This he did, when he noticed that 2 separate proceedings in respect of the same offences were going on before him. He then altered the charge in that case and followed the procedure laid down in secs. 216 and 217 of the Code. Having adopted such a course, it would have been improper for him to proceed with the private case. That would have amounted to trying the accused twice for the same offences even though it is prohibited by Article 21 of the Constitution of India. He, therefore, cannot be said to have acted illegally in amalgamating the two cases. It is true that he did so in exercise of the power under sec. 210 of the Code, but merely because reliance was placed on a wrong provision of law, it cannot be said that he had no power to do so. In our opinion, it is always open to the Court to amalgamate the two proceedings and proceed with them as one case only if that becomes necessary in order to avoid two parallel proceedings going on against the same accused for the same offences. Therefore, the second contention raised by Mr. Patel cannot be accepted."

10. In the cited decision of Pandit Amulakhchand Bansidhar Bhargav (supra), Division Bench was dealing with revision application filed by the original complainant against the acquittal recorded by learned JMFC, Baroda. On the strength of complaint filed against the accused persons, Police had filed charge sheet against accused Nos. 1 & 2 only for the offences punishable under Sections 451, 427, 223, 504, 506 and 114 IPC. Police had not initiated any further action even after receiving subsequent letter from the date of complaint and the grievance expressed therein and therefore, the complainant had filed a private complaint in the Court of JMFC, Baroda after lapse of more than one month against six accused whom he had identified as his assailants. Both these cases were tried up to summons stage and, thereafter, there was one consolidated trial and, the Division Bench ordered a retrial.

In the present case this Court is asked to

intervene at initial stage when the cases are yet to be tried or, grievance of the original complainant, requires to be resolved in light of the application made to D.S.P. on the next date of filing of the complaint. So, it is, held that the ratio of the above decision positively helps the original complainant.

11. Having considered the papers of investigation along with other papers referred to hereinabove, and the other circumstances brought to the notice of the Court, I am inclined to allow this revision application, simultaneously, quashing both the orders issuing process of different offences dated 9.10.2002 and 22.10.2002. It is not necessary to initiate formal suo motu revision proceedings, when, all parties are before the Court and, they have been offered opportunity to place their say so far as the registration of the criminal case and issuance of process of the offence punishable under Section 304A etc. against the accused Jakshi is concerned. In reference to the offence registered vide CR No. I-179/2002 with Deesa Rural Police Station, Additional Director General (Crimes) of State of Gujarat is hereby directed to further investigate the offence in light of the observations made by this Court in the above decision and, the other facts and circumstances, which may be found out during the course of investigation through an Officer not below the rank of Dy.S.P. and should see that the subordinate officer who has entrusted with further investigation in compliance of the orders passed by this Court submits the report in the Court of learned JMFC Deesa. It will be open for the agency to interrogate all the applicants or any other person during the course of investigation and any number of persons, without being influenced of the earlier report submitted by the police and/or, the observations made by learned JMFC, at the time of passing orders of issuance of non-bailable warrant against the petitioners and, also of this Court. The anxiety of the Court is that, truth comes before the Court and justice prevails. If, it is found that, some wrong was committed at the time, when the FIR was lodged or registered, either by the complainant or by the officer, who has registered the offence, then, situation also should be taken care of while entering into further investigation.

12. The Court is aware about the settled legal proposition and the ratio of the decision of the Apex Court in case of Hemant Dhasmana v. Central Bureau of Investigation and Another, AIR 2001 SC 2721 that, although sub-Section 8 of Section 173 Cr.P.C. does not, in specific terms mentioned about the powers of the Court

to order further investigation, the power of police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court and when such directions to investigate further into a crime, the jurisdiction of the Court to do so, would be exercised appropriately and, while exercising powers vested with the Court under Section 397 read with Section 401 are also limited. It would not be proper to exercise revisional powers to interfere with, because, the further investigation would only be for ends of justice and it would not be appropriate to investigate the crime into a particular direction. After further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or can reach to different conclusion. In the cited decision, the High Court while exercising revisional power had predicted that the invAestigating officer would not be able to collect any further material at all when the learned Special Judge had directed further investigation in a corruption case for the ends of justice. Here, the learned Magistrate has issued process and, that too, by warrants, is when found erroneous, some appropriate order for ends of justice needs to be passed.

13. In case of T.T.Antony v. State of Kerala & Others reported in AIR 2001 SC 2637, the Supreme Court has distinguished the ratio of the decision in case of Ram Lal Narang v. State (Delhi Administration), AIR 1979 (2) SCC page 322 and has held that there cannot be a second FIR. In Narang's case (supra) it was observed that there can be a second FIR in respect of the same subject matter. In light of the scheme between Sections 154 to 173 Cr.P.C. it has been held that only the earliest or the first information in regard to commission of a cognizable offence registered under Section 154 Cr.P.C. is relevant but the sweeping powers of investigation does not warrant subjecting a citizen each time to fresh investigation by police in respect of the same incident giving rise to one or more cognizable offence consequent upon filing second/successive complaint, whether before or after filing the final report under Section 173 (2) of Cr.P.C. In light of the ratio of the decision of T.T.Antony (supra) and other decisions dealing with the powers of this Court under Section 482 of Cr.P.C. and Article 226/227 of the Constitution of India, Court is of the view that ultimately, just balance has to be struck by the Court. In the present case the gravamen of the charges in two different set of complaints, in substance and truth, cannot be said to be same or similar and, therefore, this Court is supposed to pass an order which is able to meet

the ends of justice.

14. If, the petitioner accused or any of them are found involved in the offence of 302 IPC during the course of investigation, then, they be treated as persons granted anticipatory bail and they should be asked to approach appropriate Court for regular bail. In such eventuality, the bail plea, obviously shall have to be decided on its own merit. It will be obligatory on the part of the petitioners to file such a bail application within 8 days of fresh report.

15. Before parting with the order, I am inclined to observe that, at one point of time, there was consensus amongst counsel appearing for the parties that, there should not be any objection from either party, if further investigation is ordered and, it is entrusted to very Senior Officer of the rank of D.S.P.

16. Rule is made absolute in above terms and directions. Registry is directed to see that copy of this order in duplicate is sent to Additional Director General of Police (Crimes) and also to D.S.P.Banaskantha.

(C.K.Buch,J)

Jayanti*